

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE ) C-11-02509 LHK  
ANTITRUST LITIGATION, )  
 ) SAN JOSE, CALIFORNIA  
 )  
 ) AUGUST 8, 2013  
 )  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS ) PAGES 1-161  
 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM  
BY: JOSEPH SAVERI  
LISA J. LEEBOVE  
JAMES G. DALLAL  
255 CALIFORNIA STREET, SUITE 450  
SAN FRANCISCO, CALIFORNIA 94111

LIEFF, CABRASER,  
HEIMANN & BERNSTEIN  
BY: KELLY M. DERMODY  
BRENDAN P. GLACKIN  
DEAN M. HARVEY  
ANNE B. SHAVER  
LISA J. CISNEROS  
275 BATTERY STREET, 30TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

1 SAN JOSE, CALIFORNIA AUGUST 8, 2013

2 P R O C E E D I N G S

01:47PM 3 (COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

01:47PM 4 THE CLERK: CALLING CASE NUMBER C-11-02509 LHK, IN

01:48PM 5 RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION.

01:48PM 6 MR. GLACKIN: BRENDAN GLACKIN, LEIFF, CABRASER,

01:48PM 7 HEIMANN & BERNSTEIN ON BEHALF OF THE PLAINTIFFS.

01:48PM 8 MS. DERMODY: GOOD AFTERNOON, YOUR HONOR.

01:48PM 9 KELLY DERMODY, LEIF, CABRASER. AND THE OTHER LEIF, CABRASER

01:48PM 10 PEOPLE WITH US ARE MY PARTNER, DEAN HARVEY, AND ASSOCIATES

01:48PM 11 ANNE SHAVER AND LISA CISNEROS.

01:48PM 12 AND ALSO IN THE COURTROOM TODAY ARE NAMED PLAINTIFFS,

01:48PM 13 BRANDON MARSHAL AND MIKE DEVINE.

01:48PM 14 THE COURT: OKAY.

01:48PM 15 MR. SAVERI: GOOD AFTERNOON, YOUR HONOR.

01:48PM 16 JOSEPH SAVERI. WITH ME FROM MY OFFICE ARE LISA LEELOVE AND

01:48PM 17 JAMES DALLAL.

01:48PM 18 THE COURT: OKAY.

01:48PM 19 MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.

01:48PM 20 BOB VAN NEST FROM KEKER & VAN NEST FOR GOOGLE. I'M HERE WITH

01:48PM 21 DAN PURCELL AND TINA SESSIONS.

01:48PM 22 ALSO, LEE RUBIN FROM MAYER BROWN.

01:48PM 23 AND I'VE BEEN ASKED TO SPEAK ON BEHALF OF ALL DEFENDANTS

01:48PM 24 THIS AFTERNOON.

01:48PM 25 MR. RILEY: GOOD AFTERNOON, YOUR HONOR. GEORGE RILEY

UNITED STATES COURT REPORTERS

1 APPEARANCES (CONTINUED)

2 FOR DEFENDANT KEKER & VAN NEST  
GOOGLE: BY: ROBERT A. VAN NEST  
3 DANIEL E. PURCELL  
JUSTINA K SESSIONS  
4 633 BATTERY STREET  
SAN FRANCISCO, CALIFORNIA 94111

5 MAYER BROWN  
6 BY: LEE H. RUBIN  
TWO PALO ALTO SQUARE, SUITE 300  
7 PALO ALTO, CALIFORNIA 94306

8 FOR DEFENDANT O'MELVENY & MYERS  
APPLE: BY: GEORGE A. RILEY  
9 MICHAEL F. TUBACH  
CHRISTINA J. BROWN  
10 TWO EMBARCADERO CENTER  
28TH FLOOR  
11 SAN FRANCISCO, CALIFORNIA 94111

12 FOR DEFENDANTS JONES DAY  
ADOBE AND BY: DAVID C. KIERNAN  
13 INTUIT: LIN W. KAHN  
CRAIG E. STEWART  
14 555 CALIFORNIA STREET, 26TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104

15 FOR DEFENDANT BINGHAM MCCUTCHEN  
16 INTEL: BY: DONN P. PICKETT  
FRANK HINMAN  
17 SUJAL SHAH  
THREE EMBARCADERO CENTER  
18 SAN FRANCISCO, CALIFORNIA 94111

19 FOR DEFENDANT COVINGTON & BURLING  
20 PIXAR: BY: EMILY J. HENN  
333 TWIN DOLPHIN DRIVE, SUITE 700  
21 REDWOOD SHORES, CALIFORNIA 94065

UNITED STATES COURT REPORTERS

01:48PM 1 OF O'MELVENY & MYERS FOR APPLE. I'M JOINED BY MY COLLEAGUES

01:49PM 2 CHRISTINA BROWN AND MICHAEL TUBACH.

01:49PM 3 THE COURT: OKAY. GOOD AFTERNOON.

01:49PM 4 MR. PICKETT: GOOD AFTERNOON. DONN PICKETT. I'M

01:49PM 5 HERE ALONG WITH FRANK HINMAN AND SUJAL SHAH FOR INTEL.

01:49PM 6 THE COURT: OKAY. GOOD AFTERNOON.

01:49PM 7 MR. KIERNAN: GOOD AFTERNOON, YOUR HONOR.

01:49PM 8 DAVID KIERNAN OF JONES DAY ON BEHALF OF ADOBE. HERE WITH ME

01:49PM 9 TODAY IS LIN KAHN. BOB MITTELSTAEDT COULDN'T BE HERE TODAY

01:49PM 10 BECAUSE OF TRIAL ON ANOTHER MATTER.

01:49PM 11 THE COURT: OKAY. MR. KIERNAN AND? I'M SORRY.

01:49PM 12 MR. KIERNAN: AND LIN KAHN.

01:49PM 13 THE COURT: OKAY. THANK YOU.

01:49PM 14 OKAY. AND THERE'S NO ONE HERE FOR LUCASFILM, PIXAR, AND

01:49PM 15 INTUIT; CORRECT?

01:49PM 16 MS. HENN: YOUR HONOR, EMILY HENN, COVINGTON &

01:49PM 17 BURLING. I'M HERE FOR THE CMC FOR PIXAR.

01:49PM 18 THE COURT: OKAY. WOULD YOU MIND IF WE DID THAT AT

01:49PM 19 THE END, OR WOULD YOU LIKE TO DO THAT AT THE BEGINNING? IS

01:49PM 20 THAT OKAY IF IT'S AT THE END?

01:49PM 21 MS. HENN: YES.

01:49PM 22 MR. STEWART: YOUR HONOR, CRAIG STEWART. I'M HERE ON

01:50PM 23 BEHALF OF INTUIT.

01:50PM 24 THE COURT: OKAY. ALL RIGHT. WELL, GOOD AFTERNOON

01:50PM 25 TO EVERYONE.

UNITED STATES COURT REPORTERS

02:03PM **1** INTUIT? DO WE STILL NEED TO -- I KNOW BOTH SIDES BELIEVE THAT  
 02:03PM **2** THERE'S NO IMPACT FROM THE THREE DEFENDANTS SETTling, BUT TELL  
 02:03PM **3** ME WHAT IS THERE, IF ANY, IMPACT ON WHETHER WE STILL LOOK AT  
 02:03PM **4** THE DEPOSITION TESTIMONY AND THE EVIDENCE OF THOSE THREE  
 02:03PM **5** COMPANIES AS PART OF THE ANALYSIS IN THIS MOTION.  
 02:03PM **6** MR. VAN NEST: I THINK, YOUR HONOR --  
 02:03PM **7** THE COURT: WHAT DO WE DO WITH THAT?  
 02:03PM **8** MR. VAN NEST: I THINK THEY ESSENTIALLY DROP OUT.  
 02:03PM **9** BUT THEY'RE A SMALL PART OF THE GROUP. I MEAN, THE THREE  
 02:03PM **10** TOGETHER EMPLOY LESS THAN 8 PERCENT OF THE EMPLOYEES IN THE  
 02:03PM **11** PROPOSED CLASS.  
 02:04PM **12** SO I THINK THE REAL FOCUS NOW IS ON THE REMAINING  
 02:04PM **13** DEFENDANTS AND THE -- AND WHATEVER AGREEMENTS THEY'RE ABLE TO  
 02:04PM **14** PROVE AS BETWEEN AND AMONG THEM.  
 02:04PM **15** BUT EITHER WAY, I THINK BOTH OF US SAID IN THE STATUS  
 02:04PM **16** CONFERENCE STATEMENTS, THE SETTLEMENTS DON'T CHANGE ANYTHING,  
 02:04PM **17** IN PART BECAUSE THE THREE SETTling DEFENDANTS WERE A VERY SMALL  
 02:04PM **18** PART OF THIS TO BEGIN WITH. AS I SAID, LESS THAN 8 PERCENT OF  
 02:04PM **19** CLASS MEMBERS ARE EMPLOYED BY ALL THREE COMBINED.  
 02:04PM **20** SO THE LARGEST PART OF THE CASE IS STILL BEFORE YOUR HONOR  
 02:04PM **21** AND THE CONDUCT THAT I THINK YOU'LL BE FOCUSsing ON IS THE  
 02:04PM **22** CONDUCT OF THE FOUR REMAINING DEFENDANTS, NOT THOSE THAT HAVE  
 02:04PM **23** SETTLED OUT.  
 02:04PM **24** THE COURT: BUT WHY WOULDN'T THE COMMENTS OF  
 02:04PM **25** MR. CATMULL AND MR. LUCAS STILL BE RELEVANT TO --

UNITED STATES COURT REPORTERS

02:04PM **1** MR. VAN NEST: THEY MIGHT HAVE SOME --  
 02:04PM **2** THE COURT: -- THE ANTITRUST CONSPIRACY, HOW THE  
 02:04PM **3** AGREEMENTS WERE ENFORCED, HOW THEY WERE IMPLEMENTED?  
 02:04PM **4** MR. VAN NEST: THEY MIGHT HAVE SOME LIMITED  
 02:04PM **5** RELEVANCE, YOUR HONOR.  
 02:04PM **6** BUT ESSENTIALLY YOU'RE LOOKING NOW -- BECAUSE THE NATURE OF  
 02:04PM **7** THE AGREEMENTS THAT THEY'VE ALLEGED ARE BILATERAL BETWEEN AND  
 02:04PM **8** AMONG INDIVIDUAL PAIRS OF DEFENDANTS, I THINK THAT EVIDENCE IS  
 02:05PM **9** GOING TO BE LARGELY RELEVANT BECAUSE THE FOCUS WILL BE ON WHAT,  
 02:05PM **10** IF ANY, IMPACT WAS THERE FROM THE BILATERAL AGREEMENTS THAT ARE  
 02:05PM **11** BEING LITIGATED NOW AS BETWEEN THE OTHER FOUR REMAINING  
 02:05PM **12** DEFENDANTS.  
 02:05PM **13** SO, AGAIN, I DON'T WANT TO SAY ABSOLUTELY NO RELEVANCE, BUT  
 02:05PM **14** VERY LIMITED.  
 02:05PM **15** THE COURT: OKAY.  
 02:05PM **16** MR. SAVERI: YOUR HONOR --  
 02:05PM **17** THE COURT: LET ME HEAR FROM THE PLAINTIFFS. YOU  
 02:05PM **18** AGREE THAT YOU'RE NOT ADVOCATING AN OVERARCHING CONSPIRACY  
 02:05PM **19** ANYMORE, IT'S JUST BILATERAL AGREEMENTS AND --  
 02:05PM **20** MR. SAVERI: NO, YOUR HONOR. I DON'T THINK THAT THE  
 02:05PM **21** FACT THAT WE'VE -- THAT WE'VE -- NOTHING HAS REALLY CHANGED IN  
 02:05PM **22** TERMS OF OUR THEORY OF THE CASE. WE ALLEGE -- AND MR. GLACKIN  
 02:05PM **23** IS GOING TO HANDLE THE SUBSTANCE OF THE ARGUMENT, BUT LET ME  
 02:05PM **24** JUST SAY THIS.  
 02:05PM **25** I THINK THAT THE -- AS YOU SAID, THE EVIDENCE OF THE

UNITED STATES COURT REPORTERS

02:05PM **1** SETTling DEFENDANTS WITH RESPECT TO THE AGREEMENTS, THE NATURE  
 02:05PM **2** AND THE SCOPE OF THE AGREEMENTS, IS STILL GOING TO BE RELEVANT  
 02:05PM **3** IN THIS CASE.  
 02:05PM **4** AND TO THE EXTENT THAT THERE IS OTHER EVIDENCE THAT HAS TO  
 02:06PM **5** DO WITH THE BUSINESS PRACTICES OF THOSE COMPANIES THAT WE RELY  
 02:06PM **6** ON TO SHOW A CLASS-WIDE IMPACT, THE FACT THAT THOSE DEFENDANTS  
 02:06PM **7** HAVE SETTLED DOESN'T CHANGE THAT FACT.  
 02:06PM **8** REMEMBER THAT THIS REMAINS A, AN ANTITRUST CLAIM AND ALL  
 02:06PM **9** THE PARTICIPANTS IN THE CONSPIRACY ARE, AS A MATTER OF LAW,  
 02:06PM **10** JOINTLY AND SEVERALLY LIABLE.  
 02:06PM **11** AND SO TO THE EXTENT THAT WE PROVE AN UNDERSTANDING, A  
 02:06PM **12** COMMON COURSE OF CONDUCT THAT INVOLVES ALL OF THESE COMPANIES,  
 02:06PM **13** I MEAN, THAT EVIDENCE IS RELEVANT.  
 02:06PM **14** THE COURT: WHAT IS THE BREAKDOWN OF THE, WHAT IS IT,  
 02:06PM **15** 60,000 THAT YOU'RE ALLEGING ARE IN YOUR TECHNICAL EMPLOYEE  
 02:06PM **16** CLASS? WHAT'S THE BREAKDOWN AMONGST THE VARIOUS DEFENDANTS,  
 02:06PM **17** INCLUDING THE ONES WHO ARE NOW OUT OF THE CASE?  
 02:06PM **18** MR. GLACKIN: WOULD YOU LIKE TO KNOW THE BREAKDOWN ON  
 02:06PM **19** NUMBER OF CLASS MEMBERS OR -- WELL, I CAN TELL YOU WHERE THAT  
 02:06PM **20** INFORMATION IS IN THE RECORD ACTUALLY IF THAT WOULD BE HELPFUL.  
 02:07PM **21** THE COURT: OKAY. THAT'S FINE.  
 02:07PM **22** MR. GLACKIN: IF YOU GO TO THE OCTOBER 12, 2012  
 02:07PM **23** REPORT OF DR. LEAMER AND YOU GO TO PAGE 23, WHICH IS BETWEEN  
 02:07PM **24** PARAGRAPHS 54 AND 55, THERE ARE TWO TABLES THERE THAT -- ONE OF  
 02:07PM **25** THEM IS FOR THE ALL SALARIED CLASS AND ONE OF THEM IS FOR THE

UNITED STATES COURT REPORTERS

02:07PM **1** TECHNICAL CLASS, WHICH IS THE SAME CLASS THAT WE'RE NOW SEEKING  
 02:07PM **2** TO CERTIFY.  
 02:07PM **3** THE COURT: WHICH REPORT? I HAVE THE MAY 10TH,  
 02:07PM **4** 2013 --  
 02:07PM **5** MR. GLACKIN: THIS IS LAST YEAR.  
 02:07PM **6** THE COURT: -- AND JULY 12TH.  
 02:07PM **7** OH, I DON'T HAVE THAT.  
 02:07PM **8** MR. GLACKIN: RIGHT. BUT IF YOU WERE TO -- I'D BE  
 02:07PM **9** HAPPY TO HAND YOU MY PAGE IF IT'S HELPFUL. I SHOWED THIS TO  
 02:07PM **10** MR. VAN NEST.  
 02:07PM **11** THE COURT: CAN YOU JUST GIVE ME THE BALLPARKS?  
 02:07PM **12** MR. GLACKIN: SURE. WELL, BY NUMBER OF EMPLOYEES, I  
 02:07PM **13** CAN TELL YOU THAT ADOBE IS 3,601; APPLE IS 6,835.  
 02:07PM **14** THE COURT: 6,000 WHAT?  
 02:07PM **15** MR. GLACKIN: 835.  
 02:07PM **16** THE COURT: OKAY. THANK YOU.  
 02:07PM **17** MR. GLACKIN: GOOGLE IS 7,854.  
 02:07PM **18** THE COURT: OKAY.  
 02:07PM **19** MR. GLACKIN: INTEL IS 36,643.  
 02:07PM **20** THE COURT: OKAY.  
 02:07PM **21** MR. GLACKIN: INTUIT IS 3,236.  
 02:08PM **22** THE COURT: OKAY.  
 02:08PM **23** MR. GLACKIN: LUCAS IS 522; PIXAR IS 859.  
 02:08PM **24** THE COURT: ALL RIGHT. WHAT ABOUT THE -- HOW MANY  
 02:08PM **25** JOBS -- WELL, I GUESS THAT'S IN THE CHART THAT YOU PROVIDED,

UNITED STATES COURT REPORTERS

05:31PM **1** LET'S SAY NO AND GET ON TO A MORE REASONABLE WAY OF DOING  
 05:31PM **2** THIS AND FIGURE OUT A BETTER WAY TO RESOLVE THESE CLAIMS.  
 05:31PM **3** THANKS FOR YOUR ATTENTION, YOUR HONOR.  
 05:31PM **4** THE COURT: ALL RIGHT. WELL, THANK YOU ALL VERY  
 05:31PM **5** MUCH. I REALLY APPRECIATE IT. THANKS FOR YOUR PATIENCE TODAY.  
 05:31PM **6** MR. GLACKIN: THANK YOU, YOUR HONOR.  
 05:31PM **7** MR. VAN NEST: THANK YOU, YOUR HONOR.  
 05:31PM **8** (THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

**9**  
**10**  
**11**  
**12**  
**13**  
**14**  
**15**  
**16**  
**17**  
**18**  
**19**  
**20**  
**21**  
**22**  
**23**  
**24**  
**25**

UNITED STATES COURT REPORTERS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED  
 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,  
 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
 CERTIFY:  
 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
 ABOVE-ENTITLED MATTER.

LEE-ANNE SHORTRIDGE, CSR, CRR  
 CERTIFICATE NUMBER 9595

DATED: AUGUST 19, 2013

UNITED STATES COURT REPORTERS